



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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October 30, 1973

B-177731

The Honorable
The Secretary of the Navy

Dear Mr. Secretary:

We have considered the protest of California Plasteck Inc. against the award of a contract to Airmark Plastics Corp. under request for quotations (RFQ) No. H00383-72-0-0580. Even though we have concluded that its protest should be denied for the reasons set out below, we believe that certain aspects of this procurement require corrective action.

The RFQ dated April 17, 1972, was issued by the Aviation Supply Office (ASO), Philadelphia, to satisfy an Air Force military interdepartmental purchase request for the procurement of lighting panels. The lighting panels were to be replacement parts for Collins Radio Company (Collins) part number 767-8136-001 and were designed for use in support of AR/ASO-19/88 integrated electronics control equipment developed by Collins for use on F-4 aircraft.

The Collins drawing for the panels indicated the suggested source of supply was Airmark. The genesis of the protest was note number 1 on the Collins drawing, which states:

"This panel to be in accordance with MIL-P-77800. Classification shall be 1-R, Type V. Lamp circuit 28 volts."

Military Specification MIL-P-0077800 covered general requirements for integrally illuminated information panels. Paragraph 3.1 thereof provided:

"Qualification - The panels furnished under this specification shall be a product which has been tested and passed the qualification inspection specified herein, and has been listed on or approved for listing on the qualified products list."

Additionally, paragraph 6.3 of the specification stated in part:

"Qualification - With respect to products requiring qualification, awards will be made only for such products as have, prior to the time set for opening of bids, been tested and approved for inclusion in the applicable Qualified Products list."

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The activity responsible for the applicable Qualified Products List (QPL) is the Naval Air Systems Command (NAVAIR) which funds qualification testing conducted by the National Bureau of Standards (NBS).

Despite the requirement in MIL-P-0077890 for qualification testing, there was no indication on the face of the solicitation that it was restricted to QPL producers, nor does it appear that it was so regarded by ASO. In this connection, we note that the block adjacent to the standard clause, " * * * NOTICE--QUALIFIED END PRODUCTS (1969 DEC)," was not checked.

The contracting officer solicited quotations from Collins (supplier of the entire system), Airmark (previous supplier of the panels), and three other concerns all of which were previous suppliers of other components of the system. Both Collins and Airmark responded to the solicitation as did California Plastack, which had not been solicited.

California Plastack's quotation was the lowest received and, as a result, the contracting officer requested it to furnish information demonstrating that the offeror possessed sufficient design data to produce the lighting panels. After discussion of the QPL requirement with ASO, California Plastack advised ASO that it intended to prepare and submit qualification test samples to the NBS for qualification testing in accordance with Military Specification MIL-P-0077890.

By letter dated September 6, 1972, a copy of which was sent to ASO, NAVAIR advised California Plastack that the samples it had submitted for qualification testing met the requirements of MIL-P-77890 (successor to MIL-P-0077890), Type V, Class 2-W. Therefore, the California Plastack panel was approved for inclusion on the QPL for that class. NAVAIR engineers thereafter informed the contracting officer that, although California Plastack was not approved for the Type V, Class 1-R panel required by the Collins drawing, the approval for inclusion on the QPL for the Class 2-W panel also qualified it for QPL inclusion with regard to the Class 1-R panel. This was based on the fact that the requirements for qualification in Class 2-W were more extensive than those for Class 1-R. Consequently, California Plastack was considered an acceptable source of supply under the RFQ.

Thereafter, on September 7, 1972, the contracting officer called for "best and final" offers. In response to this request, Airmark submitted prices which were lower than those of California Plastack. Thus, California Plastack became the second low offeror. On September 18, 1972, California Plastack protested to the agency against any award under the RFQ to a manufacturer (such as Airmark) whose name did not appear on the relevant QPL. This protest was denied by the contracting officer on December 19, 1972, and on that date the contract was awarded to Airmark.

Subsequently, California Plasteck protested to our Office, on the basis that since the note in the Collins drawing incorporated by reference a military specification which required all items manufactured thereunder to be tested and approved for listing on the QPL, an award to any offeror whose product had not been so tested and approved was improper.

In denying California Plasteck's protest, the contracting officer, after consulting with ASO technical personnel, concluded that Airmark did not have to qualify its product under the QPL since: (1) Collins had repeatedly tested the Airmark panels (in its initial testing and approval of the panel and its periodic tests conducted thereafter) pursuant to test requirements believed to be more extensive than those required for listing on the QPL; (2) Collins had previously accepted thousands of panels from Airmark; (3) Collins listed and retained Airmark on its drawings as its vendor; and (4) it was known that Airmark had previously been granted first article approval of its panel under Air Force contract F09603-71-G-3040.

Subsequent to the administrative denial of the protest and award of the contract to Airmark, it came to the Navy's attention that: (1) Airmark's panel had not been subjected to a full range of tests under the above-noted Air Force contract; (2) the tests conducted by Collins were not equal to the qualification tests of MIL-P-0077800; and (3) that Airmark's panel had recently failed a specified QPL test. Indeed, the Airmark panel has only recently passed appropriate tests required by the contracting officer on February 8, 1973, almost two months after award.

ASO justified its award of the contract to Airmark on the basis that the specific QPL tests were really process tests and, as such, the approval of a test sample which is not in the exact configuration of the panel being procured does not indicate that the end product has been qualified. The Navy also states that even if the solicitation and the contract were interpreted as absolutely requiring qualification approval of Airmark's product, there is no time limitation for qualification approval. It is maintained, therefore, that Airmark may qualify its product after award.

The California Plasteck protest is premised on the incorrect assumption that the RFQ required compliance with the Collins drawing and the military specification referenced therein which, in turn, required all items manufactured thereunder to be tested and approved for listing on the QPL. The RFQ makes no reference whatsoever to the Collins drawing. More specifically, the schedule of supplies merely references the item to be manufactured as a part number (767-3135-001) and a stock number (5395-934-1349-24). Nowhere in the RFQ is there a requirement that the manufactured item be listed or

be qualified for listing on a QPL. In this regard, we note that block applicable to the "specifications" portion of the RFQ, where the Government could reference required specifications for the articles requested was not checked and the adjacent space for that portion was left blank. Based on the above, we find that the award of the contract to Airmark whose panel had not been tested and approved for listing on the appropriate QPL was not precluded by the terms of the RFQ.

While this may be the case, in a report to our Office dated August 31, 1973, ASO admitted that the procurement should have been advertised utilizing the citation of the applicable military specification, as follows:

"The military specification was not cited in the solicitation and the procurement was not advertised because, as stated in paragraph 2 of the Contracting Officer's statement, the buyer, believing that the item to be bought was one on which ASO had no data, did not send the requisition to cognizant technical representatives for technical review as required by existing procedures."

See section 1-1202 of the Armed Services Procurement Regulation which mandates the utilization of a military specification for an item where available, as here.

Furthermore, even after the erroneous failure to advertise the procurement utilizing the military specification, and over 6 months before award, ASO contracting officials were apprised of the applicable military specification but took no appropriate action. ASO, in its report, relates the circumstances surrounding this aspect of the procurement.

"Aviation Supply Office representatives first learned of the reference on the Collins drawing to the military specification at the meeting on 13 June 1972, when California Plastek [sic] representatives (1) called it to their attention, (2) advised that they considered that the Collins drawing required the use of panels qualified pursuant to the military specification, and (3) advised that they were submitting a panel to the specified testing lab for qualification tests pursuant to the specification. A decision on the question of whether qualification was or was not required was not requested by California Plastek [sic] and was not required at that time since California Plastek [sic] representative made it clear that they considered qualification was required and were submitting a sample for qualification test."

There is further evidence of undesirable consequences flowing from the conduct of this procurement. The expenditure by California Plastek of time and money in qualifying its product to compete under this

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procurement was unnecessary since the RFQ did not require such a qualification as the award to Airmark amply demonstrates. The record contains a factual dispute between ASO and California Plasteck as to exactly what part ASO contracting officials played in initiating and endorsing the unnecessary qualification procedure undertaken by California Plasteck. The second quotation, above, from the ASD report, clearly establishes that, at the very least, contracting officials were aware of the firm's intentions to proceed with the qualification procedure.

Though we do not recommend termination of the contract awarded to Airmark because performance of that contract is (or is nearly completed), we feel that the procurement procedures followed were prejudicial and unfair to California Plasteck.

ASO informs us that future procurements of this item will be advertised utilizing the Collins drawing and the military specification. And, of course, California Plasteck as a QPL source will be in a position to compete for these procurements. We recommend that the circumstances of this procurement and its deficiencies be closely analyzed and corrective measures taken.

We would appreciate advice as to our recommendation.

Sincerely yours,

Paul G. Demblin

For the Comptroller General
of the United States